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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK**

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MUMTAZ KHAN
 (Immigration File #A076 103 793),

Petitioner,

ECF Case

- against -

No. 07 Civ. 6796 (LAP) (AJP)

U.S. CITIZENSHIP & IMMIGRATION
 SERVICE, OFFICE OF U.S. ATTORNEY,
 NEW YORK DISTRICT, U.S. ATTORNEY
 GENERAL, FEDERAL BUREAU OF
 INVESTIGATION,

Respondents.

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DECLARATION OF HEIDI BIJOLLE

Pursuant to 28 U.S.C. § 1746, Heidi Bijolle declares as follows:

1. I am employed by the United States Citizenship and Immigration Services (CIS) as a Supervisory Adjudications Officer at the Vermont Service Center in Saint Albans, Vermont. I have been employed in this capacity since March 2003, and have been employed by CIS in other capacities for ten years. I am currently the Section Chief of the N-400 unit, which is responsible for overseeing the intake

processing of N-400 Applications for Naturalization from initial receipt of the application by the Vermont Service Center through the receipt of FBI name check clearances and scheduling the naturalization examination or interview in the CIS district or field office where the applicant resides. During fiscal year 2006, the N-400 section oversaw the initial receipt of 220,777 N-400 applications and the completion of processing of 263,421 N-400 applications.

2. This declaration is submitted in connection with an N-400 application for naturalization filed by Mumtaz Khan. I make this declaration based upon my personal knowledge and review of the administrative file.

3. Since the terrorist attacks of September 11, 2001, the need to conduct more rigorous and thorough background checks on aliens who are seeking immigration status or citizenship in the United States has required procedures that sometimes result in applicants not receiving their documents and benefits as quickly as in the past. In order to ensure national security and public safety, as well as to reduce the waiting time for adjudications, CIS is currently working with the Department of Justice, the Department of Homeland Security, and Immigrations and Customs Enforcement to develop and implement improved procedures that will ensure that all of the background checks are completed and the results considered as quickly as possible. However, the public safety requires CIS to make certain that the checks have been done before CIS adjudicates the N-400 application.

4. In accordance with 8 C.F.R. § 335.2(b), in the absence of a "definitive response" from the FBI with regard to an applicant's background check, an applicant may not be scheduled for a naturalization interview on an N-400.

THE N-400 APPLICATION PROCESS

5. Once CIS received an N-400 application, a file is opened and an electronic record of that application is created. Much of this initial electronic processing and data entry is automated, including the automatic generation and electronic transmission of a FBI "name check" request in FBIQUERY, the FBI repository and tracking system for FBI name check requests. Once the initial file creation and processing of an N-400 application is complete, each file is routinely monitored for the status of the background checks.

6. CIS runs an electronic report in FBIQUERY for all files pending name check responses from the FBI, to confirm the successful transmission of the FBI name check request and to identify those applications that have received responses from the FBI name checks and FD-258 (fingerprint results), and are thus ready to schedule for examination by the district offices. FBI name check requests that have been received by the FBI but have not yet been completed will be indicated by various entries depending on the result, including "No Record," "Positive Record," etc.

7. This report will also identify those N-400 applications that have received a "No Data" or "Error" response in FBIQUERY, indicating a problem with

transmission of the name check request from CIS to the FBI. If such a problem is reported, the FBI name check requests will then be initiated a second time and resent manually or electronically to the FBI for a response. In this way, CIS ensures that the FBI has in fact received all requests for name checks.'

8. FBIQUERY reports do not provide CIS with any data as to what information the FBI may have relating to a particular alien, whether an FBI investigation into the particular alien has been undertaken, or whether there are national security concerns relating to that alien.

9. For most applicants, CIS can quickly determine if there are criminal or security-related issues in the applicant's background that affect eligibility for immigration benefits. However, due to both the sheer volume of security checks CIS conducts, and the fact that CIS must await responses from the FBI or other relevant agencies that conduct some of the required security checks, some delays on individual applications are unavoidable and may be lengthy. Moreover, in some cases a background or security check will reveal that positive (derogatory) information on the applicant is possessed by some agency other than CIS, without necessarily revealing the substance of that information. In such cases, CIS works closely with the other law enforcement or intelligence agencies to obtain all available information concerning the positive result in order to properly evaluate its significance. Even where the FBI or a third agency has provided a final response, a case may still be considered pending where the response requires further

investigation or review by CIS or another agency. It is vitally important to thoroughly screen each applicant in order to resolve all concerns of a law enforcement or national security nature before determining that an individual is eligible for immigration benefits.

10. CIS reports the average processing time for specific applications and petitions on the CIS website. The information reflects only average processing times on the date the information is published. Average processing times fluctuate widely and will sometimes even regress for a specific form due to a number of factors, including a reallocation of agency resources, reordering of the agency's priorities, and other reasons. Additionally, not every application will require the same level of inquiry. Some may require a more detailed level of review and/or investigation from either CIS or other agencies, for a number of reasons ranging from the alien's eligibility for the benefit sought to national security concerns. Accordingly, even when it appears that the adjudication of a particular application is outside the average processing time, this does not establish that the delay is unreasonable or even due to factors within the control of CIS. In order to address in a consistent and fair manner the increasing number of mandamus actions filed nationwide by aliens awaiting decisions on their petitions and applications, CIS issued specific guidelines for requesting an expedited name check from the FBI. Expedited processing may be pursued in the following situations: military deployment; age-out cases not covered by the Child Status Protection Act and

applications affected by sunset provisions such as the Diversity Visa Program; compelling reasons provided by the requesting office such as critical medical conditions; loss of Social Security benefits or other subsistence; or at the discretion of the Director. (A copy of the guidelines is attached as exhibit A). CIS will not routinely request the FBI to expedite a name check when the only reason for the request is that a mandamus action is filed in the case, because doing so simply creates an incentive for aliens to file mandamus actions, further burdening the agency and distracting its resources from processing the applications themselves.

KHAN'S N-400 APPLICATION

11. Mr. Khan filed an N-400 application for naturalization with CIS on or about September 6, 2005. As set forth above, the background check process was immediately initiated.

12. Specifically, Mr. Khan was fingerprinted on or about September 29, 2005. The fingerprint resulted in a "non-hit," and that result remains valid for 15 months.

13. The FBI "name check" was ordered on September 19, 2005 and remains pending.

14. Once the results of Mr. Khan's name check are received, if they result in a non-hit, CIS will schedule a naturalization interview. At that time, the CIS District Office will also perform an Interagency Border Inspection System (IBIS) name check; results of an IBIS check are usually available immediately.

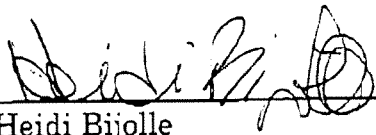
15. With respect to Mr. Khan's name check, there are therefore three possibilities. *First*, in the very likely event that the FBI name check ultimately clears with a finding of "no record" or "NR," CIS will immediately place the application in the electronic queue to be scheduled for an interview in the New York City District Office or the appropriate sub-office on the first available date, and transfer the A-file to the place where the interview will be held. *Second*, in the less likely event that the FBI eventually reports a "positive response" or "PR," significant additional time would likely be required while CIS learns the precise nature of the positive information and determines whether it would have any bearing on the outcome of the adjudication. *Third*, as long as the FBI query continues to return its current response of "pending" or "IP," this case cannot be scheduled for interview.

16. While the naturalization application remains pending, Mr. Khan retains all of the rights and benefits of a permanent resident of the United States, including the right to live and work in the country and to travel freely abroad.

17. Consistent with the above stated procedure, CIS has initiated and monitored for response (through a routine and periodic review) Mr. Khan's background checks to ensure that his case is scheduled for interview at the earliest possible time.

I declare under penalty of perjury that the foregoing is true and
correct.

Dated: Saint Albans, Vermont
March 20, 2008


Heidi Bijolle